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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

STEPHAN CAMPBELL, *on behalf of himself*  
*and all others similarly situated,*

Plaintiff,

v.

EVERYTHING BREAKS, INC.,

Defendant.

Case No.: 2:23-cv-00861-GMN-EJY

**PLAINTIFF STEPHAN CAMPBELL'S  
MOTION TO COMPEL DISCOVERY  
FROM DEFENDANT EVERYTHING  
BREAKS, INC.**

**ORAL ARGUMENT REQUESTED**

## I. INTRODUCTION

This is a class action brought pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (See Dkt. 1 (Compl.)). Defendant, Everything Breaks, Inc. (“Everything Breaks” or “Defendant”), is an auto and home warranty company that placed numerous calls to Plaintiff Stephan Campbell (“Mr. Campbell” or “Plaintiff”) soliciting him to purchase a vehicle warranty. (See *id.* at ¶¶ 33-49). At the time of the calls, Mr. Campbell’s telephone number was registered on the National Do-Not-Call registry. (*Id.* at ¶ 37). In addition, Mr. Campbell communicated to Everything Breaks that he was not interested in a vehicle warranty and did not need future calls from Everything Breaks, but received additional calls nonetheless. (*Id.* at ¶¶ 46-50). Mr. Campbell seeks to certify two classes, one for Everything Breaks’ violation of the TCPA’s National Do-Not-Call Registry provisions (*id.* at ¶¶ 62, 77-82), and another for violation of the TCPA’s internal do-not-call rules. (*Id.* at ¶¶ 62, 83-91).

Everything Breaks does not dispute that it called Mr. Campbell but contends that on June 25, 2022, approximately *a year* before it began calling Mr. Campbell, Mr. Campbell consented to receive calls from Everything Breaks by requesting an insurance quote via the website [www.ottoinsurance.com](http://www.ottoinsurance.com).<sup>1</sup> Ex. A (Interrog. Resp. 6). Even if this allegation is true, Everything Break’s purported consent defense fails because the manner in which the alleged website, [www.ottoinsurance.com](http://www.ottoinsurance.com), attempts to obtain consumer consent is improper. This makes all calls to leads originating from the website [www.ottoinsurance.com](http://www.ottoinsurance.com) illegal if the telephone numbers were also on the National Do-Not-Call registry. This is because for telemarketing calls, the caller must provide a “clear and conspicuous disclosure” when obtaining express written consent from a consumer. See 47 CFR § 64.1200(f)(9); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1844, para. 33 (2012). The Federal Communications Commission (“FCC”) recently ruled that a TCPA consent disclosure whereby the consumer agrees to receive robocalls from “marketing partners” with a link to a list of a large number of marketing partners on a secondary website is not sufficient to demonstrate that the called party consented to the calls from any one of the listed

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<sup>1</sup> The website [www.ottoinsurance.com](http://www.ottoinsurance.com) is owned and operated by Otto Quotes, LLC (“Otto”).

1 marketing partners. *See In re FCC Orders Voice Serv. Providers to Block Student Loan Robocalls*,  
 2 37 FCC Rcd 14133, 14139 (F.C.C. Dec. 8, 2022).

3 Here, because the “disclosure” Everything Breaks relies upon for consent used a secondary  
 4 website listing approximately 3,328 different “marketing partners” only viewable if the consumer  
 5 clicked on a hyperlink and reviewed a second webpage, Everything Breaks lacked the requisite  
 6 consent for the calls it placed to Mr. Campbell and the class members. *See id.*

7 In an effort to obtain the requisite information to support his forthcoming motion for class  
 8 certification under Fed. R. Civ. P. 23, Mr. Campbell propounded discovery requests seeking  
 9 documents and information related to the calls Everything Breaks placed to consumers or “leads”  
 10 it obtained in the same manner it allegedly obtained Mr. Campbell’s information, *i.e.*, from the  
 11 website [www.ottoinsurance.com](http://www.ottoinsurance.com). Everything Breaks has chosen to play games, unnecessarily  
 12 increase the cost of litigation through evasive responses, and improperly resists discovery with  
 13 baseless objections. For the reasons set forth herein, the Court should compel Everything Breaks  
 14 to respond to Interrogatories 12-15 and Request for Production Nos. 13, 14 and 21.

## 15 **II. STATEMENT OF FACTS**

### 16 **A. Plaintiff’s First Set of Discovery to Defendant Everything Breaks**

17 Mr. Campbell served his First Set of Discovery to Defendant Everything Breaks on August  
 18 29, 2023. Declaration of Max S. Morgan (“Morgan Decl.”) ¶ 2. After requesting an extension of  
 19 time, Everything Breaks responded to Plaintiff’s First Set of Discovery on October 26, 2023. *Id.*  
 20 at ¶ 3.

#### 21 **1. Request Nos. 13 and 14**

22 Request No. 13 asked Everything Breaks to produce documents “sufficient to identify the  
 23 number of leads provided to you by Otto during the relevant time period.” Ex. A at 26. Request  
 24 No. 14 asked Everything Breaks to produce “all lead information provided to you by Otto during  
 25 the relevant time period, including but not limited to the full name, address, email, phone number  
 26 and any other information associated with each individual lead.” Ex. A at 27. Everything Breaks  
 27 objected to both requests and responded “none”, subject to its objections. Ex. A at 26-27.  
 28

1                   **2. Request No. 21**

2                   Request No. 21 asked Everything Breaks to produce “the call records and all documents  
3 containing any of the following information for each outbound telemarketing call or text message  
4 sent by you or your vendors to a lead obtained from Otto: (a) the date and time; (b) the caller ID;  
5 (c) the content of the text message or content/purpose of the call; (d) the result; (e) identifying  
6 information for the recipient; (f) whether the recipient was on your internal do-not-call list at the  
7 time of the calls; and (g) any other information stored by the call detail records.” Ex. A at 31.  
8 Everything Breaks objected but agreed to produce responsive documents. Ex. A at 31. Everything  
9 Breaks has not produced this information.

10                   **3. November 2, 2023 Meet and Confer Teleconference**

11                   On October 27, 2023, Mr. Campbell wrote to Everything Breaks and advised that  
12 documents responsive to Request No. 21 had not been produced. Morgan Decl. ¶ 4. On November  
13 2, 2023, the parties held a telephonic meet and confer. Mr. Campbell requested, *inter alia*, the call  
14 records be produced and clarification regarding Everything Breaks’ responses to Request Nos. 13  
15 and 14 as they were inconsistent with Everything Breaks’ position that it obtained Mr. Campbell’s  
16 lead information from Otto. Morgan Decl. ¶ 6.

17                   Everything Breaks advised that it did *not* obtain Mr. Campbell’s information *directly* from  
18 Otto and therefore responded “none.” Morgan Decl. ¶ 7. Mr. Campbell advised that his request  
19 seeks information that originated from Otto (in the same manner as Mr. Campbell’s information)  
20 and requested that Everything Breaks amend its response to provide the relevant information even  
21 if there were unidentified “middle men” in the chain from Otto to Everything Breaks.<sup>2</sup> Morgan  
22 Decl. ¶ 8. While Everything Breaks agreed to review and consider amending certain other

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23                   <sup>2</sup> Everything Breaks has not identified any “middle men” and, if such exist should have been identified in  
24 response to Interrogatory Nos. 2 and 3. Interrogatory No. 2 asked Everything Breaks to identify “all employees or  
25 vendors involved in making outbound calls or text messages promoting [its] goods and services . . . [including] third  
26 parties that [it] contract[s] with who make telemarketing calls or provide leads.” Ex. A at 6. Interrogatory No. 3 asked  
27 Everything Breaks to “[i]dentify and describe the work of each employee or vendor identified in response to  
28 Interrogatory No. 2”. Ex. A at 7. In response, Everything Breaks objected but identified the following vendors and  
employees: Otto Quotes, LLC, Capital Econ, S.C. DE R.I. DE C.V., Five9, Inc., Roger Guerra and John Foster. Ex.  
A at 6-7. Everything Breaks provided an agreement for Five9, Inc. and Capital Econ, S.C. DE R.I. DE C.V. but did  
not provide any agreement or explanation regarding the involvement of Otto Quotes, LLC, Roger Guerra or John  
Foster. *See id.*

1 responses, Everything Breaks refused to provide the call records and also refused to explain *how*  
 2 it obtained Mr. Campbell's information that originated with Otto. Morgan Decl. ¶ 9.

#### 3 **4. Mr. Campbell's Additional Efforts to Obtain the Calling Information**

4 Mr. Campbell also attempted to obtain the relevant information from third parties. He first  
 5 subpoenaed Otto. Morgan Decl. ¶ 10. Otto responded that it had no agreement, communications  
 6 or transactions with Everything Breaks. Morgan Decl. ¶ 11. Otto did, however, produce a  
 7 document indicating Mr. Campbell's lead was sold *only* to "QuinstreetBidding." Morgan Decl. ¶  
 8 12. Mr. Campbell then served a subpoena on QuinStreet. Morgan Decl. ¶ 13. QuinStreet  
 9 responded that it had no records related to Mr. Campbell and did not purchase any leads from Otto.  
 10 Morgan Decl. ¶ 14. Mr. Campbell then issued additional discovery to Everything Breaks in an  
 11 attempt to circumvent Everything Breaks' evasive responses and narrow interpretation of the prior  
 12 requests.

#### 13 **5. Interrogatory Nos. 12, 13, 14 and 15**

14 Interrogatory Nos. 12, 13, 14 and 15 were propounded in an attempt to circumvent  
 15 Defendant's evasive responses and refusal to produce information regarding the leads it obtained  
 16 that originated from Otto. The interrogatories are as follows:

- 17
- 18 • 12. For the person or entity that sold or otherwise provided you with  
 19 Plaintiff's Lead Information, identify the total number of Leads  
 obtained from that person or entity during the relevant time period.
- 20 • 13. For the person or entity that sold or otherwise provided you with  
 21 Plaintiff's Lead Information, identify the total number of Leads  
 22 obtained from that person or entity during the relevant time period  
 that originated with the website ottoinsurance.com.
- 23 • 14. Identify all Leads or User Data obtained from the person or entity  
 24 identified in response to Interrogatory No. 12 for the relevant time  
 25 period. For each Lead or User Data, identify the following  
 26 information: a) name; b) address; c) email address; and d) telephone  
 number.
- 27 • 15. Explain how you obtain User Data or Leads that originate with  
 28 the website ottoinsurance.com and how the User Data or these Leads

are contacted or called on your behalf. A responsive answer will include a description of how User Data or lead information is obtained (e.g., via email, API, data transfer, file share, etc.) and how that User Data lead information is provided to any third party that places calls on your behalf (e.g., via email, API, data transfer, file share, etc.).

Everything Breaks objected and refuses to respond to these Interrogatories. Ex. C at 6-10.

#### **6. January 5, 2023 Meet and Confer**

The parties held another telephonic meet and confer on January 5, 2023. Morgan Decl. ¶ 17. The parties were unable to resolve their discovery disputes with respect to Interrogatory Nos. 12-15 and Request Nos. 13, 14, and 21. Morgan Decl. ¶ 18. Everything Breaks has not produced the class calling records and refuses to respond to discovery seeking how it obtained Mr. Campbell's information from Otto. Morgan Decl. ¶ 19.

### **III. LEGAL STANDARD**

Federal Rule of Civil Procedure 26(b)(1) allows parties to “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case[.]” In addition, “a party may move for an order compelling disclosure of discovery.” Fed. R. Civ. P. 37(a)(1). Such a motion is appropriate where “a party fails to answer an interrogatory submitted under Rule 33” and where “a party fails to produce documents . . . as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iv).

In Nevada, “[p]arties resisting discovery carry the heavy burden of showing why discovery should be denied.” *Collins v. Landry’s Inc.*, Civ. No. 2:13-cv-01674-JCM-VCF, 2014 WL 2770702, 2014 U.S. Dist. LEXIS 83003, at \*6 (D. Nev. June 17, 2014) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)). The party opposing discovery has the burden of showing that the discovery is irrelevant, overly broad, or unduly burdensome. *See id.* “To meet this burden, the objecting party must specifically detail the reasons why each request is improper.” *Id.* at \*6-7. “[T]he party opposing discovery must allege (1) specific facts, which indicate the nature and extent of the burden, usually by affidavit or other reliable evidence, or (2) sufficient detail regarding the time, money and procedures required to comply with purportedly improper request.” *Id.* at \*7 (citations omitted).

1 **IV. ARGUMENT**

2 **A. Everything Breaks Should be Compelled to Produce Information and**  
 3 **Documents Related to the Calls Relevant to the Proposed Classes.**

4 Mr. Campbell is entitled to discovery related to the calls Everything Breaks made to the  
 5 putative class members in this TCPA case. Requesting copies of a list of persons that were the  
 6 recipients of telemarketing calls is a standard practice in TCPA class litigation. “[A] list of phone  
 7 numbers may very well bear direct relevance to a violation of the TCPA concerning the dialing of  
 8 the very phone numbers listed.” *Knutson v. Schwan’s Home Serv., Inc.*, No. 12-cv-0964, 2013 WL  
 9 3746118, 2013 U.S. Dist. LEXIS 98735, at \*11-12, (S.D. Cal. July 15, 2013) (ordering the  
 10 production of a “dial list” consisting of everyone in the plaintiff’s proposed class). Such  
 11 information is relevant because it relates to issues upon which a district court must pass in deciding  
 12 whether a suit should proceed as a class action under Rule 23, such as numerosity, ascertainability,  
 13 commonality, and predominance. For these reasons, production of call lists are *routinely* ordered  
 14 in courts across the country. *See, e.g., Warren v. Credit Pros Int’l Corp.*, No. 3:20-cv-763, 2021  
 15 WL 3552254, 2021 U.S. Dist. LEXIS 79150, at \*21 (M.D. Fla. Apr. 26, 2021) (“Plaintiff is also  
 16 entitled to receive—prior to class certification—the documents and information related to the call  
 17 logs, transmission summaries, outbound call lists, and the information contained therein bearing  
 18 on Defendant’s communications with the putative class members, because . . . such information is  
 19 relevant both to the merits of Plaintiff’s claims and to the numerosity and commonality  
 20 requirements in Rule 23, Fed.R.Civ.P.”); *O’Shea v. Am. Solar Sol., Inc.*, No. 14CV894-L, 2016  
 21 WL 701215, 2016 U.S. Dist. LEXIS 23420, at \*7-8 (S.D. Cal. Feb. 18, 2016) (granting plaintiff’s  
 22 request for outbound dial list because the “information is relevant to both class certification and to  
 23 the merits of the case”); *Cahill v. GC Servs. Ltd. P’ship*, No. 317CV01308GPCMDD, 2018 WL  
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1791910, 2018 U.S. Dist. LEXIS 63918, at \*14-16 (S.D. Cal. Apr. 16, 2018) (compelling production of call list); *Gossett v. CMRE Fin. Servs.*, 142 F.Supp. 3d 1083, 1087 (S.D. Cal. 2015) (granting a motion to compel responses to requests for production of outbound call lists, as such lists were “relevant to the class claims and meritorious claims and defenses in this case”).<sup>3</sup>

The information Mr. Campbell seeks, *i.e.*, the list of persons Everything Breaks called that originated from Otto’s ottoinsurance.com website, is important to showings Mr. Campbell must make on his class certification motion, such as numerosity, ascertainability, commonality, and predominance. Accordingly, Everything Breaks should be compelled to produce that information in response to Mr. Campbell’s discovery requests.

First, the information sought by the discovery requests at issue is relevant to determine whether the class is ascertainable. A class must be defined objectively so that it is possible for class members to identify themselves. *See Agne v. Papa John's Int'l, Inc.*, 286 F.R.D. 559, 566 (W.D. Wash. 2012) (“the class definition must be definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member”); *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1325 (W.D. Wash. 2015) (same). Put simply, a class is considered to be ascertainable so long as it is defined by objective criteria. *Agne*, 286 F.R.D. at 566; *Dunakin*, 99 F. Supp. 3d at 1325.

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<sup>3</sup> See also, *e.g.*, *Martin v. Bureau of Collection Recovery*, No. 10 C 7725, 2011 U.S. Dist. LEXIS 157579 at \*8-\*12 (N.D. Ill. June 13, 2011) (granting plaintiffs’ requests for a call list); *Donnelly v. NCO Fin. Sys., Inc.*, 263 F.R.D. 500, 503-504 (N.D. Ill. 2009) (granting plaintiffs’ request for defendant’s call logs); *Whiteamire Clinic, P.A. v. Quill Corp.*, 2013 WL 5348377, 2013 U.S. Dist. LEXIS 136819, at \*8-9 (N.D. Ill. 2013) (granting plaintiff’s request for call list; “the information plaintiff seeks...is clearly relevant to class discovery; specifically to the issues of numerosity, commonality, and typicality”); *Starling v. KeyCity Cap., LLC*, No. 3:21-CV-818-S, 2022 WL 198403, 2022 U.S. Dist. LEXIS 11438, at \*10 (N.D. Tex. Jan. 21, 2022) (“District courts, however, routinely permit precertification discovery of call lists and call data in TCPA class actions.”); *Johnson v. Moss Bros. Auto Group, Inc.*, No. 5:19-cv-2456, 2020 U.S. Dist. LEXIS 167728, at \*9-13 (C.D. Cal. Sept. 14, 2020) (holding plaintiff in putative TCPA class action “entitled to some class-wide discovery” at precertification stage and finding call logs, dial lists, and other documents concerning prerecorded messages relevant to issues of numerosity and commonality)



1 While Mr. Campbell has objectively defined the TCPA classes, Defendant refuses to  
2 provide complete basic and relevant information in its possession that will allow Mr. Campbell to  
3 further refine his class definition and ascertain all of the members of the proposed classes. The  
4 information Mr. Campbell seeks is routinely produced in class discovery for this very reason. *See,*  
5 *e.g., Stemple v. QC Holdings, Inc.*, No. 12-CV-1997-CAB WVG, 2013 U.S. Dist. LEXIS 99582,  
6 at \*6 (S.D. Cal. June 17, 2013) (“A request for an outbound dial list in a TCPA action is relevant  
7 to class certification issues, such as ‘the number and ascertainability of potential class members.’”  
8 (citation omitted)); *Gaines v. L. Off. of Patenaude & Felix*, A.P.C., No. 13CV1556, 2014 WL  
9 3894348, 2014 U.S. Dist. LEXIS 110162, at \*5 (S.D. Cal. June 12, 2014)(in a TCPA case, “the  
10 outbound dial list is relevant to the issues of numerosity and commonality under Federal Rule of  
11 Civil Procedure 23(a), and is therefore discoverable.”); *City Select Auto Sales Inc. v. BMW Bank*  
12 *of North America, Inc.*, 867 F.3d 434, 440-41 (3d Cir. 2017) (class-wide call data relevant to  
13 ascertainability); *Donnelly*, 263 F.R.D. at 504 (“The court has already concluded that discovery  
14 aimed at ascertaining a potential class list is proper.”).

15  
16  
17 Similarly, the information sought by Mr. Campbell supports a showing of numerosity. The  
18 numerosity prerequisite is met if “the class is so numerous that joinder of all members is  
19 impracticable.” Fed. R. Civ. P. 23(a)(1). The full scope of the class is relevant to this  
20 determination. Only Defendant has information regarding how many leads it obtained from the  
21 same source (i.e., Otto) and how many calls it placed to those leads during the class period in  
22 violation of the TCPA. Everything Breaks is improperly attempting to defeat Mr. Campbell’s  
23 anticipated motion for class certification by withholding the information relevant to the proposed  
24 classes. Everything Breaks has not explained why producing this additional information would be  
25 too burdensome. Indeed, Everything Breaks has already produced a call log of Mr. Campbell and  
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28

1 indicated his information originated with Otto. Mr. Campbell is entitled to this information in  
 2 order to establish the actual size of the putative classes. *See, e.g.; Cahill*, 2018 WL 1791910, 2018  
 3 U.S. Dist. LEXIS 63918 at \*14-16 (call list relevant to numerosity); *Stemple*, 2013 U.S. Dist.  
 4 LEXIS 99528, 2013 U.S. Dist. LEXIS 99582, at \*6 (same); *Whiteamire Clinic*, 2013 WL 5348377,  
 5 2013 U.S. Dist. LEXIS 136819, at \*8-9 (same); *Gaines*, 2014 WL 3894348, 2014 Dist. LEXIS  
 6 110162, at \*5 (same).

8 Additionally, the information and documents, including the calls made is relevant to both  
 9 commonality and predominance. The commonality requirement is met if at least one legal or  
 10 factual question is common to every member of the class. Fed. R. Civ. P. 23(a)(2). The  
 11 predominance analysis focuses on whether the legal or factual issues to be resolved on a class-  
 12 wide basis are more important than those that could only be resolved on an individual basis. Fed.  
 13 R. Civ. P. 23(b)(3); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Here,  
 14 for example, one of the common questions to which the information and documents plainly relates  
 15 is (1) whether Everything Breaks made solicitations to telephone numbers registered on the  
 16 National Do-Not-Call Registry. *See, e.g., Knutson*, 2013 WL 3746118, 2013 U.S. Dist. LEXIS  
 17 98735 at \*22 (“The common question is thus, ‘were we all called on our cellular telephones, by  
 18 an . . . artificial or prerecorded voice, on behalf of [Defendants]. . . .’”) (emphasis in original);  
 19 *Doherty v. Comenity Capital Bank*, No. 16cv1321, 2017 WL 1885677, 2017 U.S. Dist. LEXIS  
 20 70873, at \*9 (S.D. Cal. May 9, 2017) (“The Court finds that outbound dial lists are relevant to  
 21 establish the issues of numerosity and commonality.”); *Whiteamire*, 2013 WL 5348377, 2013 U.S.  
 22 Dist. LEXIS 136819, at \*8-9 (call list relevant to commonality); *Cahill*, 2018 WL 1791910, 2018  
 23 U.S. Dist. LEXIS 63918, at \*13-14 (same); *Haghighayeghi v. Guess?, Inc.*, 168 F. Supp. 3d 1277,  
 24 1280 (S.D. Cal. 2016) (“Here, the information can be used toward discovery of whether the  
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putative class suffered the same alleged injury of receiving unauthorized text messages from Defendant, and thus would bear on issues of commonality and typicality.”). What leads originated with Otto and whether the consent mechanism used to obtain the leads is legally sufficient is also a common question that can be answered on a class wide basis.

Everything Breaks’ evasive responses and objections to identifying the leads it obtained that originated from Otto and the calls placed to them must be overruled.

## V. CONCLUSION

For the foregoing reasons, Mr. Campbell respectfully moves for an order compelling Defendant to respond to Interrogatory Nos. 12-15 and produce documents in response to Request Nos. 13, 14, 21 within ten days.<sup>4</sup>

Dated: January 12, 2024

Respectfully submitted,

/s/ Craig K. Perry

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<sup>4</sup> Mr. Campbell reserves the right to seek its reasonable attorneys’ fees and expenses incurred by filing this motion, as permitted by Rule 37(a)(5)(A).

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**CERTIFICATE OF SERVICE**

I certify that on January 12, 2024, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Tyrin Kanemeier  
An Employee of Craig K. Perry & Associates